CHENG MUN SIAH v. TAN NAM SUI

[O.C.J. (Rajah J.) August 25, 1980]
[Singapore — Originating Summons No. 166 of 1979]

Contract — Illegal contract — Agreement for sale of home in Singapore to a foreigner — Claim for return of deposit — Maxim "in pari delicto potior est conditio defendentis" — Residential Property Act, 1976, ss. 3(1)(c) & 2(c).

Practice and Procedure — Costs — Parties offending against law.

In this case the plaintiff, a Malaysian citizen entered into an unconditional agreement on July 14, 1978 to purchase a house in Singapore from the defendant and the completion date was to be on August 7, 1978. The vendor knew that the purchaser was a Malaysian citizen and the contract was entered into by the parties inspite of the fact that approval to purchase the said property had already been refused under section 16 of the Residential Property Act, 1976 on July 5, 1978. On July 11, 1978 the plaintiff sent her cheque for $10,700 by way of deposit in favour of the defendant's solicitors to be held by them as stakeholders. Purporting to act under Clause 15 of the said agreement the defendant having been advised that sections 3(1)(c) and 3(2)(c) of the Act did not apply in this matter forfeited the said deposit on the ground that the plaintiff had failed to complete the sale on August 7, 1978. In this proceeding the plaintiff applied to court for "a declaration that the Agreement for Sale and Purchase dated July 14, 1978 made between the defendant and the plaintiff is null and void and that the plaintiff is entitled to the return of the sum of $10,700 being the 10% deposit."

Held: (1) as the whole of this transaction was already an illegal one and both parties to the transaction had contravened some of the provisions of section 3 of the Act and as such punishable under section 25 of the Act the court could not be called upon to assist either one or the other of the parties with regard to the agreement in question;

(2) the maxim *"in pari delicto potior est conditio defendentis"* applied in this case;

(3) in the circumstances there would be no order as to costs since both parties had offended against the law.

ORIGINATING SUMMONS.

L.P. Rodrigo for the plaintiff.

Yu Chuan Lun (Miss) for the defendant.

Cur. Adv. Vult.

Rajah J.: On July 14, 1978 the plaintiff, a Malaysian Citizen, entered into an unconditional agreement (completion date August 7, 1978) to purchase No. 135 Chun Tin Road, Singapore for $107,000 from Tan Nam Sui (the defendant). The vendor knew that the purchaser was a Malaysian Citizen and what is more the contract was entered into by the parties inspite of the fact that approval to purchase the said property had already been refused, under section 16 of the Residential Property Act, 1976 (the Act), on July 5, 1978.

On July 11, 1978, before the agreement came into being, the plaintiff sent her cheque for $10,700 by way of deposit in favour of the defendant's solicitors to be held by them as stakeholders.

Purporting to act under Clause 15 of the agreement, the defendant, having been advised that sections 3(1)(c) and 3(2)(c) of the Act did not apply in this matter, forfeited the said deposit on the ground that the plaintiff had failed to complete the sale on August 7, 1978. As against this, the plaintiff was advised "that the defendant was and is under a legal disability" to forfeit the said deposit "as the defendant was and is purporting to exercise a term in the said Agreement for Sale and Purchase which is null and void under sections 3(1)(c) and 3(2)(c) of the Residential Property Act, No. 18 of 1976". Sections 3(1)(c) and 3(2)(c) read: —

"3. — (1) Except as provided in this Act —

(c) no foreign person shall purchase or acquire any residential property or any estate or interest therein except by way of a mortgage, charge or reconveyance

(2) Any —

(c) purchase or acquisition of any residential property or if any estate or interest therein by any foreign person except by way of a mortgage, charge or reconveyance, made in contravention of paragraph (c) of subsection (1) of this section,

shall be null and void."

It is patently clear from a reading of the Act that the said agreement, as it stands, is prohibited by statute and null and void *ab initio* and is unenforceable by either party. More than this, under the Act, both parties to the agreement have committed offences and could be prosecuted for them with the consent of the Public Prosecutor.

It is in these circumstances that the plaintiff now applies to the court for "a declaration that the Agreement for Sale and Purchase dated July 14, 1978 made between the defendant and the plaintiff is null and void and that the plaintiff is entitled to the return of the sum of $10,700 being the 10% deposit."

I have already said that the agreement is null and void. The question that remains to be decided is whether the plaintiff in the circumstances of the instant case is entitled to the return of the deposit of $10,700 which was paid to the defendant's solicitors as stakeholders. How and whether the defendant's solicitors should have released the stakeholding and what their responsibilities in this matter are were not canvassed before me.

As the whole of this transaction is already an illegal one and as both parties to the transaction have contravened some of the provisions of section 3 of the Act and as such punishable under section 25 of the Act I cannot see how the court can be called upon to assist either one or the other of the parties with regard to the agreement in question. It seems to me that this issue is further governed by the maxim *"in pari delicto potior est conditio defendentis"*. Under the maxim a party to an illegal contract who seeks to recover what he has transferred under it will normally be denied relief on the ground that he cannot be heard to allege his own turpitude and that any loss he may suffer is well-deserved.

I therefore dismiss the plaintiff's application. There will be no order as to costs since both parties have offended against the law.

Application dismissed.

Solicitors: *Len P. Rodrigo & Co.; Loh Lin Kok.*